

Applicant provisionally elects Group I, claims 1-13. The restriction requirement, however, is respectfully traversed and reconsideration is requested in view of the following remarks.

The Examiner has restricted the invention under 35 U.S.C. §121 into the following groups:

- I. Claims 1-13 drawn to a system for performing experiments, classified in class 422, subclass 102.
- II. Claims 14-16, drawn to a method for performing experiments, class 436, subclass 180.

Applicant provisionally elects to prosecute Group I, claims 1-13, with traverse.

The Examiner has stated that the inventions are distinct, inventions I and II, as process and apparatus for its practice.

According to MPEP 803, the restriction is proper only if the claims are able to support separate patents and they are either independent or distinct (806.05-806.05(g)). Section 803 also states that even if distinct or independent claims exist, examination on the merits is required providing the search can be made without serious burden.

In the instant case, it is apparent from a thorough reading of the specification and the claims that the systems and methods of Groups I and II are one invention in this application. References which disclose the device of Group I would clearly be cited as prior art against those which disclose the method of Group II. The Examiner would certainly feel obligated to consider such disclosure relevant and would not hesitate to cite references relating to one group against the other under 35 U.S.C. § 103. For those reasons, Applicant maintains that a co-extensive field of search seems virtually mandated and would not present an undue burden.

Furthermore, the mere fact that of separate classifications is not determinative of a proper restriction. Separate classification is mere a patent office convenience for the purpose of locating pertinent art. It is clear, therefore, that although diversity of classification may be the considered factor in a decision to make a restriction requirement, it should not be a controlling one. The Examiner may not properly rely on separate classifications to support an allegation of separate status in the art. The Examiner has also not made any further allegations as to why this restriction is proper.

For the reasons set forth above, Applicant respectfully requests that the requirement for restriction to be withdrawn and consideration of all the claims on the merits be commenced.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Applicant: van den Brink et al.  
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Should the Examiner have any questions, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number set forth below.

Respectfully submitted,



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Anna-Lisa Gallo  
Registration No.: 50,279  
Attorney for Applicant(s)

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791  
(973) 331-1700